

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF SEATTLE IRON
& METALS CORPORATION,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 88-96

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a civil penalty of \$400 for an alleged violation of opacity limits, came for hearing in Seattle, Washington, on October 31, 1988, before the Pollution Control Hearings Board, Members Hal Zimmerman (presiding) and Judith A. Bendor.

Appellant Seattle Iron & Metals Corporation was represented by its operations manager, Marc J. Sidell. Keith D. McGoffin, attorney at law, represented the respondent Puget Sound Air Pollution Control Agency (PSAPCA). The proceedings were recorded by Keri-Louise Klein of Robert H. Lewis & Associates, Tacoma.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Argument was heard. From the testimony, evidence and
3 contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant Seattle Iron & Metals Corporation ("Seattle Iron")
7 operates a metals recycling facility on Harbor Island, near the mouth
8 of the Duwamish River in Seattle, Washington. The facility includes
9 an incinerator furnace in which scrap wire is burned and the copper in
10 these wires is recovered and eventually sold.

11 II

12 Respondent Puget Sound Air Pollution Control Agency (PSAPCA) is a
13 municipal corporation with responsibility for carrying out a program
14 of air pollution prevention and control under the Washington Clean Air
15 Act. Chpt. 70.94 RCW Pursuant to RCW 43.21B.260, PSAPCA has filed
16 with the Board a certified copy of its Regulation I (and all
17 amendments thereto). We take judicial notice of the Regulation.
18 Regulation I, Section 9.03(b) governs opacity of emissions.

19 III

20 The PSAPCA inspector who observed the alleged violation has been
21 employed by PSAPCA as an air pollution inspector since September 8,
22 1987, and is assigned to the geographic area including the Duwamish
23 Industrial area for patrol, inspection, investigation, and enforcement
24 of PSAPCA Regulations I (and II). Prior to his PSAPCA employment, he

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1 worked for two years as an air quality control engineer in South
2 Dakota. He has successfully completed several special courses in
3 plume evaluation. Most recently to the incident in question, on April
4 13, 1988 he was certified for reading black and white smoke.

5 IV

6 On May 26, 1988, the inspector was told by his supervisor (at
7 approximately 1:30 p.m.) that a visible white plume had been seen
8 coming from what the supervisor thought was Seattle Iron & Metals.
9 The inspector drove to Harbor Island, and saw a white/blue plume
10 emanating from Seattle Iron & Metals' furnace stack.

11 V

12 At 2:05 p.m. the inspector took a series of opacity readings. He
13 positioned himself about 80 yards from the stack, with the sun to
14 within a 140-degree sector behind his back, and used an orange Port Of
15 Seattle crane for a background behind the plume.

16 VI

17 Between 2:05 and 2:17 p.m., the inspector took a series of
18 opacity readings every 15 seconds. During the 12 consecutive minutes
19 the opacity exceeded 20% every minute and averaged 48% opacity
20 overall. The opaque plume was not billowy. Rather it trailed off,
21 instead of dissipating rapidly as a steam plume would do.
22 Immediately after the plume opacity readings, the inspector took two
23 photographs of the plume.
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VII

During half a minute of the 12-minute reading, Seattle Iron's Operations Manager Marc Sidell saw the plume while standing near the inspector. He then went into the plant and instructed workers to squirt water into the incinerator's chamber. The resulting plume contained combined steam and particulate contaminants. It took about two and a half minutes to put out the fire.

VIII

We find that the plume's opacity exceeded 20% for more than three minutes in the one hour. We find that appellant has not proven that the presence of uncombined water (steam) was the only reason for the opacity exceeding 20%.

IX

After the plume reading, the PSAPCA inspector went to Seattle Iron's office. He spoke with Bruce Sidell, and with Marc Sidell the Operations Manager. As Operations Manager for Seattle Iron & Metals Corporation, Marc J. Sidell is in charge of hourly employees, the processing and shipping of materials, and all (non-accounting) operation² including the furnaces. The inspector informed them that the facility was violating opacity limits and issued a Notice of Violation. On June 24, 1988 PSAPCA issued a Notice and Order of Civil Penalty (No. 6839) for this alleged violation citing violation of Section 9.03(b) of Regulation I, and WAC 173-400-040(1), and assessed a \$400 fine.

Seattle Iron & Metals filed its appeal of the Notice and Order on July 5, 1988.

X

Seattle Iron knew that burning the utility wire to recover copper is difficult. It refers to such wire as "dirty wire" because it burns less efficiently and causes smoldering. To decrease the smoke problem, Seattle Iron mixed the dirty wire with "clean wire" prior to burning. Such dirty wire provides 1/2 of 1% of the copper wire Seattle Iron recovers from wire. During the incident, Seattle Iron also had its three afterburner chambers operating to reduce opacity.

Copper can also be recovered from "dirty wire" by stripping, without the necessity of burning. Since the incident Seattle Iron has been using this method.

XI

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the issues and the parties.



PSAPCA Reg. 1, Section 9.03(b) prohibits emissions which exceed 20% opacity for more than three minutes in any one hour. WAC

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(5)

1 173-400-040(1) is to substantially the same effect, but allows the
2 following exception to negate liability:

3 (b) When the owner or operator of a source supplies
4 valid data to show that the presence of uncombined
5 water is the only reason for the opacity to exceed
twenty percent. [Emphasis added].

6 The State statute supporting WAC 173-400-040, and Regulation I
7 present a strict liability regime. Compliance at all times is
8 required.

9 We conclude that Seattle Iron violated Regulation I, Section
10 9.03(b), and WAC 173-400-040 on May 26, 1988. In so concluding, we
11 conclude that appellant has not proven the WAC 173-400-040(1)(b)
12 exception.

13 III

14 Seattle Iron was previously found to have violated air pollution
15 opacity standards for emissions from its plant on November 25, 1985.
16 Seattle Iron & Metals Corporation v. PSAPCA, PCHB No. 85-248 (March
17 31, 1986). PSAPCA's \$400 fine was affirmed in full.

18 IV

19 The reasonableness of a civil penalty is based upon several
20 factors, including the extent and duration of the violation, the
21 violator's prior conduct and conduct immediately following the
22 incident. The goal of civil penalties is to promote future
23 compliance. Industrial Maintenance and Construction, Inc. v. PSAPCA,

1 PCHB No. 87-179 (October 13, 1988). Given all the factors, we find
2 the penalty reasonable. However, given the Company's immediate action
3 to prevent recurrence (by stripping the wire), some mitigation is
4 appropriate.
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(7)

ORDER

PSAPCA's Notice and Order of Civil Penalty No. 6839 in the amount of \$400 is AFFIRMED. However, \$50 of the fine is SUSPENDED on condition that appellant does not violate air pollution laws for a period of two years from the date this Order is entered.

DONE this 22nd day of November, 1988.

POLLUTION CONTROL HEARINGS BOARD


HAROLD S. ZIMMERMAN, Presiding


JUDITH A. BENDOR, Member